

SPECIAL CONSIDERATIONS FOR COURT-INVOLVED INDIGENOUS YOUTH AND COMMUNITY-BASED SUPPORTS

A GUIDE FOR CALIFORNIA COURTS

JUDICIAL COUNCIL OF CALIFORNIA

youth law center

National Center for Youth Law



ABOUT THIS GUIDE

This guide is part of a series of resources to help judicial officers and court stakeholders support the mental health and well-being of court-involved children and youth. It focuses on updated legal entitlements to mental health services under the California Advancing and Innovating Medi-Cal program (CalAIM) with special considerations for court-involved indigenous youth and the role of the court in supporting the youth.

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For questions about this guide, please email health@youthlaw.org.

This guide contains legal information, not legal advice. Readers are encouraged to consult their own legal counsel for advice on these topics.

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INTRODUCTION



California is home to more individuals with indigenous ancestry than any other state. Per the most recent census, more than 1.3 million individuals in California reported having American Indian/Alaska Native (AI/AN) ancestry, including between 316,000 and 350,000 children.[1] This guide looks at important considerations for the court when working with indigenous children and families, providing context and recommendations for helping connect these youth and families to community-based therapeutic supports to which they are entitled under Medi-Cal and recent changes under California's new Medicaid waivers and other initiatives.

While this guide will refer to indigenous and Native children as a group, the individual tribes that these children belong to are incredibly diverse, with distinct makeup, governance structure, membership criteria, cultural traditions, and histories. Further, an individual child or family's relationship to their tribe (or tribes) may also be distinct and evolving. For some children, the court process may be the first time they are being connected to their tribe in a real way, while for others, the tribe and/or their tribal identity may be central and core to their understanding of who they are.

Finally, the content of this guide was heavily informed by individuals from indigenous and tribal communities who work in some combination with youth, the law, and community-based supports both inside and outside California.

Note: There are several terms used to describe youth with Native American ancestry, including American Indian, tribal, indigenous, and Native. Because some terms have specific legal definitions, we use the broader terms of indigenous and Native to include the varying legal statuses, affiliations, and identities and may use Indian when referring to legal designations (e.g., Indian Child Welfare Act) using that specific term.

Indian Child Welfare Act and these new reforms are outside the scope of this resource guide.

DEMOGRAPHICS AND BACKGROUND

Indigenous culture is not homogenous. There are over 100 federally recognized Indian tribes in California, several dozen tribes that are petitioning for federal recognition, tribes who were formerly recognized but then had the designation removed by the termination policies in the 1950s, tribes who were never formally recognized, and tribes with a presence in Mexico or Canada but that are not recognized in the United States.[2] Native children and families live throughout California. While some may live on one of the nearly 100 reservations or rancherias or on individual Indian trust allotments, nearly 90% live in urban areas throughout the state.[3] Some may be connected to California tribes while others may have connections to tribes elsewhere in the US. Additionally, for a variety of reasons, many individuals may not claim their Native heritage. For example, their family may have found it too painful to discuss, those who knew the history may have passed, or they may have a misunderstanding of what qualifies a person to be considered Native American or American Indian.[4]



Source: Bureau of Indian Affairs and the U.S. Census Bureau (2011).

Indigenous peoples in California—and in the US generally—have survived government-sponsored genocide and enslavement.[5] Native children and families have been forcibly relocated and intentionally separated from their communities and culture repeatedly, including during the Spanish Mission period, the Gold Rush, and the establishment of boarding schools for Native youth.[6] In the last century, the Rancheria Act of 1958 terminated the federal status of 44 Indian tribes in California as part of a national effort to force assimilation.[7] The Relocation Act of 1956 forced relocation of entire Native American families to urban areas across the US, resulting in approximately 70,000 out-of-state Native Americans being moved to Los Angeles and San Francisco.[8] Consequently, these two cities have two of the largest urban Native American populations in the United States.

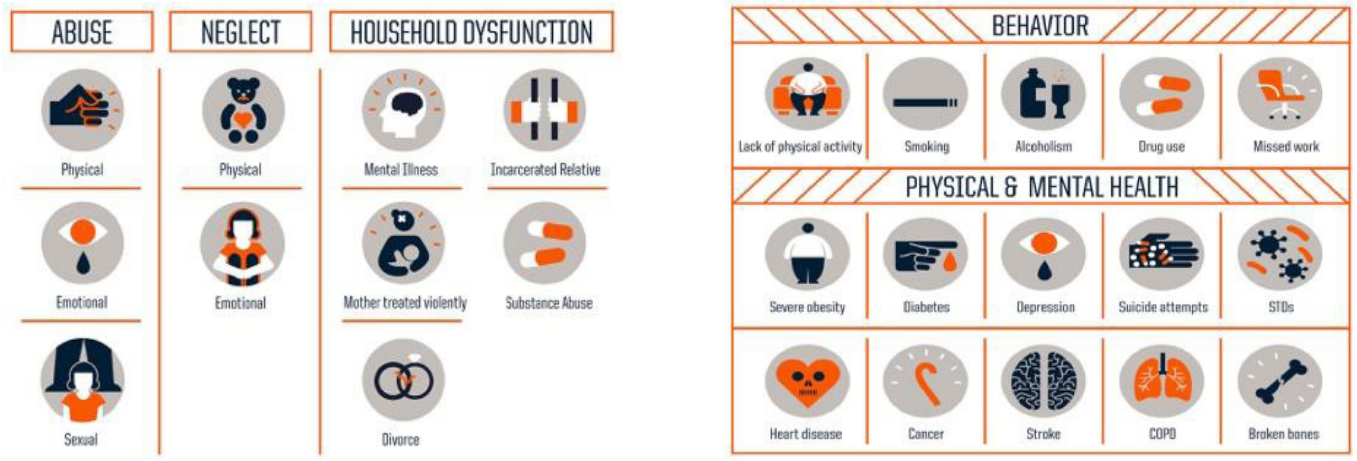
In response to these geographic and historical conditions, indigenous children and families have increased legal protections through the Indian Child Welfare Act (ICWA), enacted in 1978, and various protections and processes enacted in California after some delay.[9] In 2006, California enacted its own state protections, referred to as Cal-ICWA, through Senate Bill 678.[10] Recently, there have been a number of reforms inspired by the California ICWA Compliance Task Force Report in 2017, leading to changes in court rules, educational and training materials, judicial guides, and legislation.[11]

At the same time as these most recent reforms, California has embarked on an unprecedented investment in new networks of care under Medicaid with tens of billions of dollars in reforms through the California Advancing and Innovating Medi-Cal (CalAIM) initiative and Medicaid waiver renewals, the Children and Youth Behavioral Health Initiative (CYBHI), and Elementary and Secondary School Emergency Relief funding. These reforms have larger goals of health equity and, specifically, providing more equitable access to needed health-care supports for populations who historically have been underserved, including indigenous communities.[12]

ADVERSE CHILDHOOD EXPERIENCES (ACEs) AND CalAIM

One of the important ways the California Department of Health Care Services (DHCS) is attempting to address health inequities in its children's behavioral health-care system is through a recognition of the role of historical trauma on health outcomes and disabilities. In California, a young person under age 21 can meet access criteria for a specialty mental health service (SMHS) by "scoring in the high-risk range under a trauma screening tool." Further, young people are considered to presumptively meet the access criteria for supports if they have involvement in the child welfare, juvenile justice, or homelessness systems.[13] For these youth who have experienced trauma, the question is not *whether they are eligible* for a specialty mental health service, but *which service they need.*

The state's trauma screening is based on adverse childhood experiences (ACEs).[14] Since the first Kaiser study in the late 1990s, ACEs is one of the most researched public health concepts of our time. ACEs are traumatic experiences that a youth under age 18 may experience, including abuse, neglect, or other household traumas like witnessing domestic violence.



Source: Centers for Disease Control and Prevention; Credit: Robert Wood Johnson Foundation

Accumulated ACEs can have long-lasting impacts. Approximately 60% of all adults have experienced 0-1 ACEs. Statistically, there seems to be a tipping point for individuals who have experienced four or more ACEs. Individuals who have four or more ACEs (which, per one study,[15] is approximately 16% of all individuals who were screened in California) have an increased likelihood of subsequent adverse outcomes such as:

> Chronic obstructive pulmonary disease by 390%
> Hepatitis by 240%
> Depression by 460%
> Attempted suicide by 1,220%

People with four or more ACEs are also twice as likely to be smokers, seven times as likely to be alcoholics, and be more likely to have more broken bones, more drug prescriptions, and more autoimmune diseases. People with six or more ACES are estimated to have a shorter lifespan by 20 years.[16]

But higher ACEs is not a determinant sentence. Fortunately, since the original Kaiser ACEs study in the late 1990s, there is a growing body of evidence of what can be done to interrupt the cycle of ACEs and help to prevent negative health outcomes.[17] These include:

- **Trauma-responsive supports,** which is an approach of service delivery that focuses on building empathy and a shared understanding of the child's trauma history, the impact of that trauma on how the child experiences the world, and how the service provider will be responsive to help get the child what they need;
- **Supports that help to build resiliency,** including
  - Having a sense of purpose (through faith, culture, identity)
  - Opportunities to connect socially
  - Building a secure relationship to a caring adult, who is frequently a relative or community connection
  - Social cohesion (connections with peers and near-peers)
  - Social capital (connections with mentors and positive adult role models)
  - Parental resilience
  - Building individual coping skills (problem-solving skills, autonomy and independence, etc.)
- **Preventing trauma,** including
  - Increasing and maintaining connections to community, culture, and kin
  - Increasing access to community-based, trauma-responsive supports
  - Increasing access to health care, education, and stable housing
  - Increasing access to economic supports

Additionally, there is a growing body of evidence that suggests that ACEs can have an epigenetic impact, meaning that these experiences can become biologically embedded, altering the function but not the structure of the gene. This means there is a molecular response to try and increase immediate survival, amplifying the fight or flight response even when the risks are not immediate and instead are chronic. These genetic modifications can then be passed down, impacting health and well-being across generations.[18]

ACEs IN A TRIBAL CONTEXT

According to myriad studies, indigenous children experience significantly more trauma than their non-indigenous peers. For example, they have been found to be up to three times more likely to have experienced multiple ACEs,[19] and per a report by the Indian Country Child Trauma Center, more than twice as likely to experience trauma.[20] According to a 2014 Department of Justice report, Native youth experience post-traumatic stress disorder (PTSD) at the same rate as war veterans returning from Iraq.[21]

Further, there is a growing understanding that trauma in indigenous communities is more likely to be multigenerational due to a number of factors, including persistent multi-generational poverty and the horrific history of forced relocation, cultural destruction, violence, and loss since the onset of colonization. As one study describes it:

> The term "historical trauma" encompasses the cumulative exposure of traumatic events that affect an individual and continue to affect subsequent generations … As it was initially described, the term brought together notions of historical oppression and current experiences of psychological suffering … The intergenerational aspect of historical trauma points to internalized and unresolved grief that continues to impact the lives of AI/AN youth today.[22]

Consequently, indigenous youth may experience the cumulative impact of ACEs. They are more likely to have experienced multiple ACEs, to have parents or grandparents who have experienced multiple ACEs, and to have had multigenerational disruptions to connections to community, culture, and family – which are considered prophylactics in preventing the harms that can arise from experiencing multiple ACEs.

For court-involved youth, these impacts can be exacerbated by the threat of further dislocation and removal from home and community (e.g., as the result of involvement in the child welfare and juvenile justice systems). The multi-generational impact of these systems has been disastrous to indigenous communities. ICWA was passed in 1978 in part because of the overwhelming removal of tribal children from their families. The rates in California were worse than the national average at that time, with Indian children eight times more likely than non-Indian children to be removed from their tribal homes and families; and, when removed, they were placed in non-Indian homes and institutions a staggering 90% of the time.[23]

Pre-dating ICWA was the boarding school era (1870s-1930s), federal policy mandating the removal of Native children from their families and communities to attend government or church-run boarding schools. Boarding schools were, by design, forced assimilation. Native children were not allowed to speak their language or practice their religion. They were given new Americanized names, forced to cut their hair, and had any traditional toys or clothing destroyed. As Justice Neil M. Gorsuch notes in *Haaland v. Brackeen*:

> By the late 1870s, [the federal government's] goals turned toward destroying tribal identity and assimilating Indians into broader society. Achieving those goals, officials reasoned, required the "complete isolation of the Indian child from his savage antecedents." And because "the warm reciprocal affection existing between parents and children" was 'among the strongest characteristics of the Indian nature," officials set out to eliminate it by dissolving Indian families.[24]

In addition to the trauma and forced dislocation from community and family, there is growing evidence of widespread physical, emotional, and sexual abuse at these boarding schools both in the US[25] and Canada.[26] Most recently, a federal report found that "at least 973 American Indian, Alaska Native, and Native Hawaiian children died while attending Federal Indian boarding schools" with 74 marked and unmarked burial sites at 65 different school sites.[27]

Forced assimilation tactics were repeated from 1958 to 1967, when the federal Bureau of Indian Affairs operated the Indian Adoption Project, forcing assimilation by removing Native children from their families and placing them with white families.[28] The boarding school and adoption eras have had long-lasting effects on indigenous communities, including increased depression and other poor health impacts not only on the family members who were directly impacted, but also on subsequent generations, including youth today.[29] As a 2024 Department of the Interior report on the boarding school era notes:

> *Descendants who may have never gone to Indian boarding schools themselves shared the heavy lift of breaking generational cycles of traumatized parenting and the effort required to establish new ways of being with their own children and family. This frequently involved the need for professional therapy and journeys into recovery from chemical dependency, addiction, and physical, emotional, or sexual abuse.*[30]

At minimum, these eras have had a lasting impact on the trust in youth-serving government systems, especially with regards to the education and child welfare systems.

In this context of trauma and discrimination, it is important to note that data currently tracked show indigenous youth are disproportionately involved with the child welfare and juvenile justice systems. Nationally, indigenous youth and families are twice as likely to be investigated and four times as likely to be removed by the foster care system than their white counterparts.[31] California continues to have one of the highest rates of disparities, ranking 14th worst

for disproportionate removal of indigenous youth from their families. In California, indigenous youth are almost four times more likely than their white peers to be arrested and confined by the juvenile justice system.[32]

In 2022 and 2023, the U.S. Department of the Interior conducted a listening tour, called "The Road to Healing," to hear from survivors about their experiences in the federal Indian boarding school system. One Michigan participant noted:

> *We are making difficult choices today that will affect our children for generations to come. Our duty is to be good ancestors by leading them to healing. We must end the generational trauma by acknowledging its harmful effects on our people, communities, and unlearn the oppressive behaviors associated with this trauma.*[33]

PRACTICE TIPS AND SPECIAL CONSIDERATIONS FOR THE COURT WHEN WORKING WITH INDIGENOUS CHILDREN AND FAMILIES

KEEPING INDIGENOUS CHILDREN CONNECTED TO FAMILY AS A THERAPEUTIC RESPONSE

In light of this history of forced relocation, forced assimilation, and forcible removal of indigenous children from their homes and culture, the most important and appropriate therapeutic response by the court system is to make every effort to keep children in their homes with family. This includes ensuring appropriate identification of American Indian youth under ICWA and its associated noticing requirements and placement preferences, including ensuring that ICWA youth are placed with a relative or extended family member of an Indian child.[34]

Additionally, courts should take steps to ensure that indigenous youth and families who are not covered under ICWA because they are not a member of a federally recognized Indian tribe or eligible for membership in such a tribe[35] are still identified and have appropriate case plans prioritizing connection to culture and family and have access to culturally appropriate supports and services. A youth who identifies as indigenous or who has indigenous ancestry but is not covered by ICWA may still benefit from being connected to the tribe or tribal resources. In urban areas, especially, there are an array of services available to indigenous youth regardless of membership in a tribe.

Welfare and Institutions Code section 306.6 gives the court that has jurisdiction discretion to determine services of individuals of non-recognized tribes. The services, in the "spirit of the law" ICWA services, may include conducting placement consistent with ICWA placement preferences, considering the child's tribal members as important connections for holiday visits, tutors, and mentors, and reaching out to the tribe to establish connections and explore resources. All of these services are important, community-based supports that can help connect or maintain indigenous youth to culture and family and thereby help them heal from current and historical trauma.[36]

For all court-involved indigenous youth, courts should ensure that case plans include language reflecting cultural connection. Family services (e.g., parenting classes) should also have culturally based options. For example, it might be documented in the case plan that the agency will contract with a tribal cultural resource to create a cradle board or baby basket for a newborn or that the youth will participate in a peer-to-peer program that is run by a local tribally led community-based organization.



ACTIVE EFFORTS AS INVESTING IN FAMILY

When an Indian youth is in foster care, the usual "reasonable efforts" required in child welfare proceedings are insufficient. Instead, "active efforts" are required, which are "affirmative, active, thorough, and timely efforts intended primarily to maintain or reunite an Indian child with his or her family."[37] Justice William Thorne, Jr., has also provided the following description:

> [A]ctive efforts was not a measure of "services," but instead a different attitude or approach to "helping" a parent or family succeed. Not judging, but healing. Not compliance focused, but oriented to assisting the parent and family. Not creating a parenting plan, but instead walking and working beside the parent and family. Active efforts is about doing things differently, not just more or increased amounts of the same things we have already been doing. It is about investing in the success of the family. It is about connecting them to healing. It is about walking beside them and lending them our strength when they need it. It is what we would do if they were our families. It is what we would do if their lives really "mattered." All families matter…and we should act like it.[38] Courts should inquire about active efforts toward family preservation at every court hearing and ensure that the responsible county agency has documented active efforts in detail in order to allow the court to make the proper legal findings.

The heightened active efforts standard recognizes the importance of maintaining family and tribal community connection and also is a practical mechanism to help ensure indigenous youth are connected to community supports that enhance their overall well-being.

ENSURE TRIBAL COLLABORATION IN CHILD AND FAMILY TEAMS AND COMPLETION OF THE CANS ASSESSMENT

The child and family team (CFT) is central to identifying and delivering services to children and families who are involved in the child welfare system. For youth who have been identified as an Indian child, tribal representatives are mandatory members of the CFT. Tribal inclusion is not optional.[39]



The Child and Adolescent Needs and Strengths Assessment (CANS) assessment is the primary tool used in the CFT process to help create the case plan and identify strengths and services. Courts should ensure that agencies are collaborating closely with tribes in completing the CANS. This will help agencies and the courts better identify strengths of the child and family from a cultural perspective, better identify family for both placement and support, better understand the child and family's history, culture, and community, and identify culturally appropriate supports.[40] These specific cultural supports should then be documented in the CFT plan or the case plan.

FOSTER YOUTH BILL OF RIGHTS – RIGHTS SPECIFIC TO TRIBAL YOUTH IN FOSTER CARE

Youth who are members, or could be members, of a federally recognized tribe, have further rights to community-based supports as identified and defined by their tribe, including the right to:

- Live in a home or short-term residential therapeutic program (STRTP) that maintains the social and cultural standards of their tribe and tribal community.
- Live in a home of their relatives or extended family or a home that is licensed, approved, or specified by their tribe.
- Live in an Indian foster home that is licensed or approved, or a facility that is approved by their Tribe or an Indian organization that meets their needs
- Live in a place that reflects and keeps them connected to the cultural and social standards of their tribe and/or tribal community.
- Contact their ICWA advocate and have them attend court.
- Contact their tribe, tribal members, and Indian community.
- Have a social worker/probation officer, and lawyer who is trained in ICWA.
- Participate in traditional Native American religious practices.
- Get help becoming a member of an Indian tribe or Alaskan village.
- Get all the benefits that come from being a member of an Indian tribe or Alaskan village.
- Be free from discrimination and be recognized for their relationship with an Indian tribe or Alaskan village
- Have protections for their tribal relationship in their case plan[1]

ENSURE YOUTH ARE BEING REFERRED FOR SMHS AND OTHER SUPPORTS

All children under 21 in California presumptively meet access criteria for a specialty mental health service (SMHS) if they score high risk on a trauma screening or are involved in the foster care, juvenile justice, or homelessness systems. Because of their disproportionate involvement in these systems and their experience of multi-generational trauma, the vast majority of indigenous youth meet these criteria. To help ensure access, court staff can:

- Provide information about county access lines to families and tribes for screening and services;
- Become familiar with culturally accordant providers and services that are offered locally.
  - The Statewide Directory of Services for Native American Families is an example of one way the courts can find more information on services and supports throughout California.
- Provide space at the courthouse for county mental health, community-based organizations (CBOs), and/or legal aid to make it easier for youth and families to access help.
- Become familiar with the practices and values of local tribes. As our recent Best Practices Guide on ICWA noted, "Courts would benefit from a greater awareness of their regional tribes' values and traditions, such as important ceremonies for tribal youth discussed above. Tribal advocates and attorneys have noted that they would appreciate being asked about these values and traditions in court."[42]
- Inquire about active efforts toward family preservation at every court hearing.

ENSURE YOUTH HAVE THE OPTION AND CHOICE TO BE CONNECTED TO CULTURALLY APPROPRIATE AND TRADITIONAL SUPPORTS

Connecting indigenous youth to therapeutic services may mean also connecting them to services that are outside of the clinical behavioral health-care system. A growing body of research suggests that culture can be a protective factor in avoiding adverse health impacts of ACEs and healing trauma. This can especially

be true for indigenous children. Stronger cultural connections—such as learning about one's traditional culture, learning and using Native languages, and participating in spiritual practices—have been linked to positive outcomes and greater resilience in children. For example, Native American youth with strong cultural connections were less likely to have suicidal thoughts, and mothers with strong connections to their Native American identities reported fewer developmental concerns in their toddlers.[43]

Some jurisdictions have opportunities for Native children to participate in traditional practices or customs. Several juvenile justice facilities have had outside tribal leaders come into the facilities to provide cultural connection, ceremony, language, and traditional ways. Others have made sure that tribal members had equal access to youth, as more conventional chaplains would. Other jurisdictions have specialized fields in their transitional independent living plan (TILP) for foster youth to identify cultural or traditional practices.

For indigenous children who are placed outside of their tribal community through the juvenile justice or foster care system, courts may request agreements with the placement (e.g., resource foster parent, STRTP) to provide access to traditional ceremonies (e.g., feast days) or practices. In some jurisdictions, these agreements may be formal, either in the TILP or a contract between the placement and the placing agency. This allows the child to stay in contact with their tribal community even while they are placed away from it. In addition to being a research-based response to ACEs, this also helps with the eventual transition of the young person back to their family or community.[44]

Some jurisdictions outside California create formal contracts with non-tribal foster parents with specific requirements related to accessing traditional customs or ceremonies. These contracts may be enforceable by tribes if the non-tribal foster parents deny access later.

> "What has helped the heart keep going? Ceremony. Community."
>
> –TRIBAL LAWYER

UTILIZE EXPANSIVE FAMILY FINDING AS A BEHAVIORAL HEALTH SUPPORT

In California, all children in foster care and nonminor dependents have the right to be placed with a relative, extended family member of an Indian child, or nonrelative extended family member if an appropriate and willing individual is available.[45] For all indigenous youth, expansive family finding can and should include locating and making connections to family regardless of whether that connection will result in a placement. Family members may be added to the CFT as supports or may have a different, specific role to help keep the young person connected to their community and culture. Kin–including extended family members and tribal members–can provide support by providing transportation to ceremony, hosting meals or bringing food, providing respite, tutoring in language, and more.

Even for youth who may not be protected under Cal-ICWA (e.g., youth who are not connected to a federally recognized tribe), this expanded family finding and connection is important. This may also include helping young people connect to their "dance family" as part of family finding. Courts can order the child welfare worker or probation officer to include the dance family as part of their family finding to locate supports and connections to the youth and family.



BECOME FAMILIAR WITH CULTURALLY ACCORDANT THERAPEUTIC SERVICES AVAILABLE IN YOUR JURISDICTION (OR NEARBY)

Every jurisdiction in California with indigenous residents should have contracts for culturally appropriate services. This is one of the recommendations of the California Tribal Families Coalition:

> *Counties, not Tribes, receive funding for social services; and those services should be representative of the client community – where a percentage of the children in care are Native American, a corresponding percentage of the services should be targeted at that population. Such services might include Positive Indian Parenting, cultural mentors, trauma based services addressing intergenerational trauma, etc.*[46]



Some examples of culturally accordant services for indigenous youth and families:

Skuy' Soo Hue-no-Woh Developmental Playgroup in Humboldt County – Provides child developmental information to caregivers and an opportunity for them to connect with other adults while children play. A Yurok speaker attends the play sessions, speaking to the children in Yurok. This program is supported by First 5 Humboldt.

Road to Resilience in Humboldt and Del Norte Counties – Provides a home visiting and case management program for new and expecting mothers at risk of substance abuse. The program uses the curriculum from the Family Spirit home visiting model. Care navigators are members of local indigenous communities and are trained in trauma-informed methodologies. Client families may receive traditional baby baskets and hand woven cultural items (e.g., baby rattles, blankets).

Cognitive Behavioral Interventions for Trauma in Schools (CBITS) – An evidence-based practice that has been modified for Native American adolescents in collaboration with Native health professionals, elders, teachers, and counselors. Results have shown reductions in PTSD and depressive symptoms among Native youth participants.

Parent Child Interaction Therapy (PCIT): Honoring Children, Making Relatives and Trauma Focused CBT (TF-CBT): Honoring Children, Mending the Circle – Two supports that have been adapted for Native American children and families, incorporating "American Indian philosophies into the basic concepts."[47]

There are many other culturally accordant services for indigenous children and families. Many of them take evidence-based services and then infuse them with Native American traditional practices or ideas that focus on reconnecting youth to traditional Native teachings and culture, providing adult mentors, encouraging youth to talk about their experiences, and connecting youth with peers.[48]

BECOME FAMILIAR AND DEVELOP PARTNERSHIPS WITH LOCAL NATIVE AMERICAN HEALTH CENTERS AND PROVIDERS

Native American health centers, which are frequently Federally Qualified Health Centers (FQHC) through Indian Health Services as well as independent community health clinics, are a wealth of experience and source of innovative, culturally accordant supports and services. There are Native American health centers in the Bay Area, Sacramento, Fresno, and more. The Southern Indian Health Council operates an FQHC which provides mental health services for youth in the San Diego area. And Two Feathers is an innovative mental health provider in Humboldt that provides cultural programs, counseling, and more for Native youth.[49]

Note: A youth does not need to be a member of a federally recognized tribe to utilize many tribal resources. Youth may be eligible if they are from a non-federally recognized tribe, if they have parents, grandparents, or previous generations listed on the California Judgement Role, or if they self-identify. For some of the resources above, youth do not even need to identify as indigenous or Native.

ADDRESS OTHER NEEDS TO HELP PROMOTE RESILIENCY AND AVOID FURTHER TRAUMA

As discussed above, one of the ways to mitigate subsequent harm from ACEs is to avoid further trauma through providing access to health care, education, and economic stability. This may include:

- Centering youth voice and acknowledging individuality and strengths.
- Determining appropriate frequency of mandatory contact with court or governmental staff within the context of the historical violence and trauma caused by governmental systems on indigenous communities in California and the United States more generally.
- Referring the youth and family to legal aid for assistance in removing barriers to benefits to which they are entitled.
- Requesting a screening of the youth for Supplemental Security Income disability benefits under Assembly Bill 1331 and tracking the referral to ensure that benefits begin before dismissal of the case.
- Avoiding any unnecessary sanctions on the youth or family that could result in financial, administrative, or transportation barriers that could unintentionally lead to home instability and further trauma.

INCREASE COMPETENCY AND GENERAL EDUCATION AMONG COURT STAFF AND OTHER INDIVIDUALS WORKING DIRECTLY WITH THE YOUTH AND FAMILIES

Because trauma and the historical context is of paramount importance when working with indigenous youth and their families, it is important that all staff working with the youth and families (including court, probation and child welfare staff, probate court investigators, etc.) are trained both in trauma responsive methodologies and in the history and context of tribes and indigenous communities in California. Some jurisdictions have partnered with local tribes to develop training curriculum on ICWA and on working with tribal families and children. This ensures that the educational materials are accurate and supported by the community, while also improving relationships between the staff and the local tribes.



ENDNOTES

[1] *Selected Population Profile in the United States: California: American Indian and Alaska Native*, U.S. Census bureau, https://data.census.gov/table/ACSSPP1Y2022.S0201?q=American%20Indian%20and%20Alaska%20Native%20alone%20or%20in%20any%20combination%20population%20in%20California&t=-02 (last visited July 18, 2024); First 5 Ctr. for Child.'s Pol'y, Support For Native American Infants, Toddlers and Their Families in California 2 (2023), https://first5center.org/publications/support-for-native-american-infants-toddlers-and-their-families-in-california#chapter125712. This includes American Indian and Alaska Native alone or in any combination with one or more other races. Population counts are further complicated by bad data, systemic mis-identification, and unclear nominal categories. For more information, see the population discussion at First 5 Ctr. for Child.'s Pol'y, *supra* at 4.

[2] *California Tribal Communities*, Cal. Cts., https://www.courts.ca.gov/3066.htm (last visited July 18, 2024).

[3] *Who are Urban Indians?*, Cal. Consortium for Urb. Indian Health, https://ccuih.org/about/about-urban-indians/#:~:text=In%20fact%2C%20nearly%2090%25%20of,that%20began%20in%20the%201950s (last visited July 18, 2024).

[4] Jud. Council of Cal., Social Work Practice Tips for Inquiry and Noticing: Reasons Why People Do Not Claim to Be American Indian 1 (2010), https://www.courts.ca.gov/documents/Tribal-ReasonsNotBACAIRSF2010.pdf.

[5] In 2019, Gov. Gavin Newsom formally apologized and pushed the state to reckon with California's dark history of violence, mistreatment, and neglect of Native Americans, saying it amounted to genocide. Andrew Oxford, *California Governor Calls Native American Treatment Genocide*, June 18, 2019, AP Press. https://apnews.com/article/california-native-americans-982b507a846a4ad6bc184b3e7f99ec70 (last viewed July 18, 2024).

[6] Dwight Dutschke & Santa Barbara Indian Ctr., *American Indians in California*, in Cal. Dep't of Parks & Recreation, Five Views: An Ethnic Historic Site Survey for California (1988), https://www.nps.gov/parkhistory/online_books/5views/5views1.htm.

[7] Rancheria Act, Pub. L. No. 85-671, 72 Stat. 619 (1958).

[8] For more information, see *American Indian Urban Relocation*, Nat'l Archives, https://www.archives.gov/education/lessons/indian-relocation.html (last visited July 18, 2024).

[9] Indian Child Welfare Act of 1978, Pub. L. No. 608, 92 Stat. 3069 (codified as amended at 25 U.S.C. §§ 1901–1963).

[10] *See generally* Cal. Dep't of Soc. Servs., All County Letter NO. 08-02 (2008) https://www.cdss.ca.gov/lettersnotices/entres/getinfo/acl08/08-02.pdf (providing information to counties about the uniform application of the federal Indian Child Welfare Act (ICWA) in California).

[11] *See* generally Cal. ICWA Compliance Task Force, Report to the California Attorney General's Bureau of Children's Justice (2017), https://turtletalk.blog/wp-content/uploads/2017/03/icwa-compliance-task-force-final-report-2017.pdf; *see* also Jud. Council of Cal., Indian Child Welfare Act (ICWA): Best Practices Guide for California Courtand Judicial Officers 1–2 (2020), https://www.courts.ca.gov/documents/ICWABestPracticesGuide-October2020.pdf.

[12] *CalAIM Corner: Transforming Behavioral Health*, Cal. Dep't of Health Care Servs., https://www.dhcs.ca.gov/CalAIM/Pages/Transforming-Behavioral-Health.aspx (last visited July 18, 2024).

[13] This shift recognizes the trauma that would lead to their involvement in those systems and the trauma they incur once involved in those systems. *See* Cal. Dep't Of Health Care Servs., Behavioral Health Information Notice (BHIN) NO: 21-073, at 4 (2021) [hereinafter BHIN 21-073], https://www.dhcs.ca.gov/Documents/BHIN-21-073-Criteria-for-Beneficiary-to-Specialty-MHS-Medical-Necessity-and-Other-Coverage-Req.pdf.

[14] While to date the state has not provided a specific screening tool for counties to use, it has suggested the ACE questionnaire and the Pediatric ACES and Related Life-Events Screener (PEARLS). *See* BHIN 21-073, *supra* note 14, at 4.

[15] Office of the California Surgeon General, *The ACEs and Toxic Stress Campaign*, https://osg.ca.gov/theacescampaign/ (last visited July 18, 2024).

[16] *See* SAMHSA's Center for the Application for Prevention Technologies, *The Role of Adverse Childhood Experiences in Substance Misuse and Related Behavioral Health Problems* (2018) and ACES Too High, P*ACEs Science 101*, https://acestoohigh.com/aces-101/ (last visited July 18, 2024).

[17] See, for example, a description of Positive Childhood Experiences as an alternative but related description of what is effective in responding to and protecting children from the adverse impact of ACES. POSITIVE EXPERIENCES, THE FOUR BUILDING BLOCKS OF HOPE 1 (2023), https://positiveexperience.org/wp-content/uploads/2023/03/The-Four-Building-Blocks-of-HOPE.pdf.

[18] *See*, e.g., Christopher W. Kuzawa & Elizabeth Sweet, *Epigenetics and the Embodiment of Race: Developmental Origins of US Racial Disparities in Cardiovascular Health*, 21 AM. J. HUM. BIOLOGY 2, 10 (2009). *See* also Tessa N. Brockie et al., *A Framework to Examine the Role of Epigenetics in Health Disparities Among Native Americans*, NURSING RSCH. & PRAC., 2013, at 2.

[19] Mary Kay Kenney & Gopal K. Singh, *Adverse Childhood Experiences Among American Indian/Alaska Native Children: The 2011-2012 National Survey of Children's Health*, SCIENTIFICA, 2016, at 1.

[20] DOLORES SUBIA BIGFOOT, PHD ET AL., TRAUMA EXPOSURE IN AMERICAN INDIAN/ALASKA NATIVE CHILDREN 2 (2008), aspe.hhs.gov/sites/default/files/private/pdf/207941/AIANYouthTIC.PDF.

[21] DORGAN ET AL., ATT'Y GEN.'S ADVISORY COMM. ON AM. INDIAN & ALASKA NATIVE CHILD. EXPOSED TO VIOLENCE, ENDING VIOLENCE SO CHILDREN CAN THRIVE 6 (2016), https://www.govinfo.gov/content/pkg/GOVPUB-J32-PURL-gpo54790/pdf/GOVPUB-J32-PURL-gpo54790.pdf.

[22] AMANDA LECHNER ET AL., ADDRESSING TRAUMA IN AMERICAN INDIAN AND ALASKA NATIVE YOUTH 1 (2016) (citation omitted), https://aspe.hhs.gov/sites/default/files/private/pdf/207941/AIANYouthTIC.PDF. *See also* Karina L. Walters, et al., Bodies Don't Just Tell Stories, They Tell Histories, 8(1) DU BOIS REV. 179 (2011)

[23] JUD. COUNCIL OF CAL., *supra* note 12, at 4.

[24] Haaland v. Brackeen, 599 U.S. 255, 298 (2023) (Gorsuch, J., concurring).

[25] *See*, e.g., Brad Brooks, *Burial Sites Found at 53 Native American Boarding Schools, U.S. Government Says*, REUTERS (May 11, 2022, 5:40 PM PDT), https://www.reuters.com/world/us/interior-dept-investigation-finds-burial-sites-53-indian-boarding-schools-2022-05-11/.

[26] *See*, e.g., Ian Ausent & Dan Bilefsky, *Hundreds More Unmarked Graves Found at Former Residential School in Canada*, N.Y. TIMES (June 24, 2021), https://www.nytimes.com/2021/06/24/world/canada/indigenous-children-graves-saskatchewan-canada.html.

[27] Bryan Newland, U.S. Dep't of the Int., *Federal Indian Boarding School Initiative Investigative Report Vol. II* 15-16 (2024).

[28] *Understanding the Indian Child Welfare Act*, ICWA LAW CTR., https://www.icwlc.org/education-hub/understanding-the-icwa/ (last visited July 18, 2024).

[29] *See* Amy Bombay et al., *The Impact of Stressors on Second Generation Indian Residential School Survivors*, 48 TRANSCULTURAL PSYCHIATRY 367, 368–69 (2011); Kathleen Brown-Rice, *Examining the Theory of Historical Trauma Among Native Americans*, 3 THE PRO. COUNSELOR 117, 123–24 (2013); *Understanding the Indian Child Welfare Act*, *supra* note 29.

[30] Newland, *supra* note 28, at 82.

[31] *See* NAT'L INDIAN CHILD WELFARE ASS'N, DISPROPORTIONALITY IN CHILD WELFARE 3 (2021), https://www.nicwa.org/wp-content/uploads/2025/03/NICWA_11_2021-Disproportionality-Fact-Sheet.pdf

[32] *See* JOSH ROVNER, THE SENTENCING PROJECT, TRIBAL DISPARITIES IN YOUTH INCARCERATION 1 (2023), https://www.sentencingproject.org/fact-sheet/disparities-in-tribal-youth-incarceration/.

[33] Newland, *supra* note 28, at 96.

[34] See 25 U.S.C. § 1915(b)(i) & (c). "Extended family member" shall be as defined by the law or custom of the Indian child's tribe or, in the absence of such law or custom, shall be a person who has reached the age of

eighteen and who is the Indian child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent." 25 U.S.C. § 1903(2).

[35] See 25 U.S.C. § 1903 et. seq.

[36] For more information and guidance on what courts can do to provide "Spirit of the Law" ICWA services, see Jud. Council of Cal., Following the Spirit of the Indian Child Welfare Act (ICWA), https://www.courts.ca.gov/documents/Tribal-FollowSpiritICWA.pdf (last visited July 18, 2024).

[37] 25 C.F.R. § 23.2 (2024); Jud. Council of Cal., ICWA Information Sheet: Active Efforts and Resources 1–2, https://www.courts.ca.gov/documents/ICWA-active-efforts.pdf (last visited July 18, 2024).

[38] Hon. Leonard Edwards, J. of the Super. Ct. of Cal., Cty. of Santa Clara et al., Presentation on Active Efforts: *What Judicial Officers & Counsel for Parents & Children Need to Know* (June 15, 2021), https://www.courts.ca.gov/documents/Active-Efforts-Webinar-20210615-Materials.pdf.

[39] See ACL 22-73.

[40] For more recommendations and details, see CDSS, *Child and Family Teams – Tribal Engagement Guide* (2024) https://caltribalfamilies.org/wp-content/uploads/2024/07/tribal-engagement-guide.pdf .

[41] Cal. Welf. & Inst. Code § 16001.9 (Deering 2024); *Know Your Rights: Indian Child Welfare Act (ICWA)*, Cal. Foster Care Ombudsperson, https://fosteryouthhelp.ca.gov/foster-youth-rights/#:~:text=You%20have%20the%20right%20to%3A,-live%20in%20a&text=live%20in%20an%20Indian%20foster,Tribe%20and%2For%20tribal%20community (last visited July 18, 2024).

[42] Jud. Council of Cal., *supra* note 11, at 5.

[43] See Kevin Yoder et al., *Suicidal Ideation Among Native American Youths*, 10 Archives of Suicide Research 180, 177–190 (2006); And Michelle C. Sarche et al., *Maternal Correlates of 2-Year-Old American Indian Children's Social-Emotional Development in a Northern Plains Tribe*, 30(4) Infant Mental Health J. 338 (321-340) (2009).

[44] For more information on other recommendations, see Jud. Council of Cal., The Indian Child Welfare Act for Kin Caregivers & Foster Parents (2017), https://www.courts.ca.gov/documents/ICWA-Act-for-Kin-Caregivers.pdf.

[45] Cal. Welf. & Inst. Code § 16001.9(5); 25 U.S.C. § 1915(b)(i) (2024).

[46] Cal. ICWA Compliance Task Force, *supra* note 12, at 96.

[47] L.A. Cty. Dep't of Mental Health, Prevention and Early Intervention (PEI) Evidence-Based Practices, *Promising Practices, and Community-defined Evidence Practices: Resource Guide 2*, at 191 (2011), https://file.lacounty.gov/SDSInter/dmh/159575_EBPPPCDEResourceGuide2_0.pdf; Dolores Subia BigFoot & Susan R. Schmidt, *Honoring Children, Mending the Circle: Cultural Adaptation of Trauma-Focused Cognitive-Behavioral Therapy for American Indian and Alaska Native Children*, 66 J. Clinical Psych.: In Session 847, 850 (2010).

[48] For more information, including descriptions of other services, see Lechner et al., *supra* note 23.

[49] For more mental health services and supports for Native children, see *Statewide Directory of Services for Native American Families*, Cal. Cts., https://www.courts.ca.gov/5807.htm (last visited July 18, 2024).

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